PP

v.

ABDUL KARIM PAK KUB & ANOR

HIGH COURT MALAYA, TAIPING
ABDUL MALIK ISHAK JC
[CRIMINAL TRIAL NO: 58-15-92
27 JULY 1993

CRIMINAL LAW: *Dangerous Drugs Act 1952 (Malaysia) - Section 39B(1)(a) - Offence of trafficking in dangerous drugs - Whether accused was found in possession of dangerous drugs - Evidence led by the prosecution - Whether sufficient to establish possession - Dangerous Drugs Act 1952, s. 37(da)*

CRIMINAL PROCEDURE: *Prosecution - Consent of Public Prosecutor - Meaning of*

CRIMINAL PROCEDURE: *Prosecution - Consent of Public Prosecutor - Consent given based on scanty information - Whether within scope of the law - Effect of trial*

EVIDENCE: *Expert evidence - Calling of expert witness - Whether procedure complied with*

EVIDENCE: *Expert evidence - Expert not giving reasons - Necessity to give reasons for findings - Failure to do so - Implications thereof*

According to the evidence led by the prosecution, one ASP Badaruddin ('Badaruddin') arranged a meeting between Detective Corporal Aziz ('Aziz') and an informer, where PW7 had instructed the informer to introduce PW8 to two male Thai Malays, suspected to be involved in trafficking.

Aziz had made arrangements with the two targets for the supply of 5kg of cannabis. Aziz then briefed Badaruddin and Aziz, and one Detective Corporal Busra ('Busra') was directed to act as an agent provocateur. The trap was set and the two accused persons were arrested as they handed to Busra the packages containing the dangerous drugs. The two accused persons are now charged for the offence of trafficking in dangerous drugs under s. 39B of the Dangerous Drugs Act 1952 ('the DDA').

The issues for consideration were in relation to the doubts arising from the facts leading to the apprehension of the two accused persons.

Held:

[1] The cardinal principle of criminal law is that the prosecution must prove its case beyond a reasonable doubt. It was the duty of the presiding judge therefore at the close of the prosecution's case to consider the question of law whether there was some evidence, not inherently incredible, to prove one or more of the essential ingredients of the alleged offence. The judge therefore must by necessity evaluate and weigh all the evidence. If there was no evidence at all to prove one or more of the essential ingredients of the offence, the accused must be acquitted without calling for his defence.

[2] There was evidence that the government chemist who had given evidence on the identification of the drugs was a chemist with the Chemistry Department since 1 November 1978 and that he possessed a BSc (Hons) Degree in chemistry from University Malaya. However in introducing the chemist, the prosecution had not complied with the procedure laid down by the law.

[2a] Furthermore, it was incumbent on the prosecution to lead evidence through the government chemist to establish beyond a reasonable doubt that the subject matter was in fact cannabis within the meaning of s. 2 of the DDA – in that 'any part of the any plant of the genus cannabis from which the resin has not been extracted, by whatever name it may be designated.' Since there was no such evidence that court was entitled to infer favourably for the accused that the resin had been extracted and thus rendering the subject matter to a harmless plant material, and being harmless, the subject matter cannot be construed to be a dangerous drug within s. 2 of the DDA.

[2b] Although there was no need for the government chemist to describe in great detail the steps taken by him in the laboratory, there should be some credible evidence to support the opinion of the chemist. He is obliged to give detailed evidence of his reasons for holding that the exhibits were dangerous drugs of the genus cannabis. This was not done and therefore what was adduced was merely a bare expression of his opinion which had no evidential value at all.

[3] Where persons are prosecuted in mass for an offence and the prosecution intended to rely on presumptions against these persons, it is absolutely essential that the investigations are properly carried out and all documents to be tendered as exhibits are correctly translated by a qualified interpreter.

[3a] On the facts, no identification documents were tendered by the prosecution to establish the names of both the accused persons even though they had the means of doing so.

[4] A consent to prosecute "is an act of reason, accompanied with deliberation, the mind weighing as in a balance, the good and evil on each side." It was incumbent therefore on the deputy public prosecutor to have exercised the same degree of deliberation.

[4a] With such scanty information pertaining to the identification of two accused persons, the learned deputy public prosecutor prepared a requisition under s. 41A of the DDA and the consent under s. 39B(3) of the DDA, itemising the names of both the accused persons therein and accordingly transferred the case to the High Court. Devoid of the names of both the accused persons, the learned deputy public prosecutor clearly had not acted within the scope required by the law. It followed therefore that the consent was defective and the trial was therefore a nullity.

[5] The prosecution had submitted that the two packages containing drugs were held by both the accused persons. However there was no evidence of fingerprints from the exhibits or even the taking of fingernail clippings or hand swabs from the accused persons. Such failures only weakened the prosecution's case.

[6] It was also stated that the two packages (received by Busra) were duly marked and put inside the cabinet file under lock and key. The cabinet file was the personal cabinet of Busra. From the facts, it transpired that there were several movements of the exhibits from the cabinet file. Being a personal cabinet file, it was not controlled by means of a register book where its contents and the movements of its contents would be recorded in the record book. It was therefore incumbent on Busra to have testified that there were no other exhibits kept there. This was not done. Thus the possibility of a mix-up could not be ruled out.

[7] The prosecution had also failed to tender the car or at least a photograph of the car as exhibits; or even a photograph of the boot of the car bearing the two packages in question. There was also no evidence that the mechanism of the boot of the car was in perfect order. All these factors, taken individually or cumulatively, affected the strength of the prosecution's case.

[Accused acquitted.]

Case(s) referred to:
Abdul Hamid v. PP [1956] MLJ 231 ***(foll)***
Loo Keck Leong v. PP [1992] 3 CLJ 1332 ***(refd)***
Lyn Hong Yap v. PP [1956] MLJ 226 ***(foll)***
Munusamy v. PP [1987] 1 MLJ 492 ***(foll)***
Ng Yik Kwok & Ors v. PP [1989] 3 MLJ 166 ***(refd)***
Sim Ah Song & Anor v. Rex [1951] MLJ 150 ***(foll)***
Sun Kam Heng v. PP [1993] 1 CLJ 109 ***(refd)***
Tai Chai Keh v. PP [1948-49] MLJ Supp 105 ***(foll)***
Wong Chop Saow v. PP [1965] 1 MLJ 247 ***(foll)***
Woo Chin Chong & Ors v. PP [1953] 22 MLJ 130 ***(foll)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 37(da), (vi), 39B(1)(a), (2), (3), 40A, 41A
Penal Code, s. 34

For the prosecution - Murtazadi Amran DPP
For the accused - Jula Singh; M/s Paramjit & Co

Reported by Mariette Peters-Goh

JUDGMENT

Abdul Malik Ishak JC:

I acquitted and discharged both the accused without their defence being called as the prosecution had failed to establish a *prima facie* case which, if unrebutted, would warrant their conviction.

The accused persons were jointly charged with trafficking in dangerous drugs, to wit, cannabis weighing 3,503g at about 3.20pm on 25 May 1992 at Batu 108, Air Krai, Kerunai, Gerik, Perak, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Act 234) and punishable under s. 39B(2) of the same Act read with s. 34 of the Penal Code.

According to the evidence led by the prosecution, on 24 May 1992 at about 2pm, at room 306, Friendly Hotel, Gerik, Perak, ASP Badaruddin Zafari (PW7) arranged a meeting between Detective Corporal 66556 Abdul Aziz bin Setafa (PWS) and an informer. In this meeting, Badaruddin instructed the informer to introduce Aziz to two male Thai Malays, suspected to be involved in drug trafficking in Ulu Perak areas. Badaruddin directed Aziz to act as an agent provocateur. The informer and Aziz then proceeded, on a motorcycle, to Kampong Lallang to meet the two targets. At Kampong Lallang, the informer introduced Aziz to the two targets and the three of them (Aziz and the two targets) then proceeded by van to Leboh Raya Felda Nenering in the direction of Pengkalan Hulu, leaving the informer

alone at Kampong Lallang. The van proceeded towards Pengkalan Hulu and it was then parked off the main road, at a secluded spot. The parties then engaged themselves in active discussions. The discussions centred on the supply of drugs. It was agreed that the price of 1kg of cannabis to be RM1,200 and that both the targets agreed to supply 5kg of cannabis on the next day (25 May 1992) at about noon and that both the targets would be waiting for him (Aziz) at the Pengkalan Hulu taxi stand. They then parted company. At about 4pm of the same day (24 May 1992), Aziz briefed Badaruddin at room 306 Friendly Hotel, Gerik, Perak, as to the outcome of his meeting with the two targets. This prompted Badaruddin to organise a meeting of his police personnel in order to nab the two targets.

On 25 May 1992 at about 1pm, at room 306, Friendly Hotel, Gerik, Perak, Badaruddin chaired a meeting, attended by several police personnel. All the police personnel that attended the meeting were given roles to play. Both Aziz and Detective Corporal 70718 Busra Abdul Kadir (PW8) were directed to act as agents provocateur. Busra was told to play the part of a "taukeh" to Aziz and he (Busra) was given RM8,000 cash as a ploy. Both of them were directed to drive a proton saga car bearing false registration plate ABT 9753. It was in evidence that this proton saga car is owned by the police and is used specially for such a purpose. Aziz was directed to give a "follow me" signal, in the form of putting his riqht hand onto his left. Whereas Busra was directed to put his arms akimbo, as a signal to show that the supply of drugs were in Malaysia.

Using the proton saga car, both Aziz and Busra proceeded to Pengkalan Hulu and arrived there at about 2.20pm. Near the taxi stand at Pengkalan Hulu town, Aziz pointed out the two targets to Busra. At that time, the two targets were standing on the five foot way of Hotel Highland. Busra quickly parked the proton saga car near to Hotel Highland, locked it and proceeded together with Aziz towards both the targets. Aziz introduced Busra to both the targets as "Bob", his "taukeh". All four then entered the restaurant of Hotel Highland and had drinks. In the course of the trial, both the targets were identified as the first and second accused by Aziz, Busra, and other police personnel. I shall revert to this later in the course of my judgment.

In the restaurant of Hotel Highland, the conversations centred on the availability of the drugs, its amount and its location. The first accused suggested that payment of the drugs be made at that very restaurant and that the second accused would show Aziz and Busra the locations of the drugs. Busra refused to agree to this suggestion and suggested that all four

of them proceed to that place as it would be easier for all of them to discuss any dissatisfaction, if any, in regard to the price and the supply of the drugs. The first accused finally agreed. Then all four walked towards the proton saga which was parked earlier by Busra. As they walked, both Aziz and Busra gave the requisite signals. At this time, it was in evidence that Badaruddin and his police party saw what transpired at the restaurant of Highland Hotel. From then onwards, they followed the movements of Busra and Aziz closely.

Busra drove the proton saga car with the first accused seated next to him. The second accused and Aziz sat in the rear passenger's seat. The proton saga was driven in the direction of Gerik. While driving the proton saga car, Busra showed RM8,000 to the first accused in order to gain his confidence. As the car arrived at Batu 108, Air Krai, Kerunai the second accused requested Busra to stop. Busra complied. The first accused then directed the second accused to fetch the drugs in the bushes. The second accused got down from the car and proceeded towards the bushes. Aziz followed the second accused up to the edge of the bushes. Initially, Busra and the first accused remained in the car, but, a short while later, they both alighted from the car and stood by the car, waiting for the second accused. Soon thereafter, Aziz saw the second accused come out from the bushes carrying a package in his hands. Aziz requested the second accused to hand the package to Busra. This was done. Busra took the package from the second accused and he then placed it inside the boot of the proton saga (see the package on the right in photograph P23A). According to Aziz, the second accused told him that the package contained ganja. As soon as Busra put the package inside the boot of the car, the second accused said that there was another package of ganja. Busra then closed the boot of the car. The first accused then asked the second accused to fetch that second package. The second accused was then seen walking in the direction of Pengkalan Hulu and crossing the road towards the bushes to the left. Busra, the first accused and Aziz then entered the proton saga car and Busra drove the car and made a 'U' turn and proceeded in the direction of Pengkalan Hulu towards the second accused, who by this time, was waiting by the road side with a package in his hands (see photograph P22J with marking number '2' indicating the location of the second accused). The proton saga car was parked by the side of the road; all three of them got out of the car. Busra opened the boot of the car. The second accused, according to Aziz, then handed the package to Busra who in turn examined it and placed it inside the boot of the car (see the package on the left in photograph P23A). Having done this, Busra then shouted "POLICE" and he proceeded to arrest the second accused.

Aziz on the other hand, arrested the first accused. By this time the police party arrived and they assisted Busra and Aziz in arresting both the accused. At the scene, Busra showed and handed to Badaruddin the two packages still kept in the boot of the proton saga. Badaruddin took a look at the two packages, closed the boot of the proton saga and he then drove the said car with the two accused, duly escorted in the said car, to Gerik police station.

Upon arrival at Gerik police station, Badaruddin carried the two packages himself and proceeded straight to the CAD room where he lodged a police report vide Gerik report no: 586/92. Badaruddin then proceeded to mark the exhibits and thereafter he handed the exhibits including the drugs in question to the investigating officer of the case, one Inspector Mohd. Zaidi bin Abdullah (PW13). Zaidi himself kept the exhibits in his personal cabinet file, marked and sealed the exhibits at a later stage, and on 27 May 1992 at 3.20pm, handed the exhibits to the government chemist (PW3) for analysis. I shall revert to this piece of evidence in the course of my judgment.

Badaruddin also prepared the search list (P27).

In due course, the government chemist (PW3) examined and analysed the compressed dried leaves and confirmed it to be 3,503g of cannabis as defined in the Dangerous Drugs Act 1952 (Act 234) ("Act"). I shall in due course, revert to the evidence of the government chemist.

I shall now proceed to state the reasons for the acquittal and the discharge of both the accused as stated in the opening paragraph of this judgment.

It is now trite law that the prosecution must prove every ingredient of its case beyond reasonable doubt. The subject matter of the charge is cannabis weighing 3,503g, a substantial amount if one were to consider the ceiling for trafficking as set out in s. 37(da)(vi) of the Act. Proof that the subject matter of the charge being cannabis, an essential ingredient, is required for an offence under s. 39B(1)(a) of the Act. The learned deputy public prosecutor, in an attempt to ensure that the government chemist handled the exhibits rightly, especially the cannabis in question (P15 and P19), may have inadvertently overlooked an important aspect to the evidence of the government chemist.

There was evidence that the government chemist had been a chemist with the Chemistry Department since 1 November 1978, a span of 14 year odd and that he possessed a B.Sc (Honours) degree in the University of Malaya and consequently he had given expert evidence in court on the analysis of

dangerous drugs, and that such evidence had been accepted by the court. At first blush it seems that the prosecution has successfully established the expertise of the government chemist. But, on close scrutiny, it is apparent that it has not fully complied with the principle as set out in the case of *Wong Chop Saow v. Public Prosecutor* [1965] 1 MLJ 247 where Hashim J said:

> May I, with respect, suggest that to avoid confusion the expert witness should give his evidence as follows. He should first state his qualifications as an expert. He should then state that he had given evidence as an expert in such cases and that his evidence has been accepted by the Courts. He should then proceed to describe the various documents and give his reasons why in his opinion they relate to characters lottery. The trial magistrate must then come to a finding that he either accepts or rejects the evidence of the expert witness *vis-a-vis* characters lottery.

Though *Wong Chop Saow v. Public Prosecutor (supra)* is a case pertaining to lottery, its principle is still germane to the present case. There was not an iota of evidence being led as to how the government chemist analysed the drugs in question nor was there evidence that the resin has not been extracted bearing in mind that the resin is "the soul of a cannabis plant" (see *Loo Keck Leong v. Public Prosecutor* [1992] 3 CLJ 1332 SC especially p. 1333). I am mindful of the fact that the government chemist stated in his oral evidence that cannabis was as defined in the Act, and that in his report (P20) dated 8 August 1992 he had certified that the cannabis was as defined in the Act, yet with respect, in a serious case of this nature, it is incumbent on the prosecution to lead evidence through the government chemist to establish beyond reasonable doubt that the subject matter of the charge is in fact cannabis within the meaning of s. 2 of the Act ("cannabis" means any part of any plant of the genus Cannabis from which the resin has not been extracted, by whatever name it may be designated). In short, without the evidence that the resin has not been extracted, several inferences can be deduced from it. The court is entitled to infer favourably for the accused. (*Tai Chai Keh v. PP* [1948-49] MLJ Supp 105) that the resin has been extracted and thus rendering the subject matter to be a harmless plant material. Being harmless, the subject matter cannot be construed to be a dangerous drug within the meaning of s. 2 of the Act.

I am also mindful of the salutary advice by Mohamed Azmi SCJ in *Munusamy v. Public Prosecutor* [1987] 1 MLJ 492 SC that there is no need for the government chemist to describe in great detail the steps taken by him in the laboratory. But this salutary advice of Mohamed Azmi SCJ is subject to a further proviso that there must be some credible evidence to support the opinion of the Government Chemist. This is what Mohamed Azmi SCJ said:

> So long as some credible evidence is given by the chemist to support his opinion, there is no necessity for him to go into details of what he did in the laboratory, step by step.

In the present case, the opinion of the government chemist that the subject matter was in fact cannabis was unsupported by credible evidence. The government chemist merely concluded that the subject matter was cannabis without stating his reasons and without itemising the tests undertaken by him. This is what the government chemist said after having examined the packages submitted to him.

> In package "A", on analysis, I found the plant material to be cannabis having a nett weight of 1,516g.
>
> In package "B", on analysis, I found the plant material to be cannabis having a nett weight of 1,987g.
>
> Cannabis is as defined in the Dangerous Drugs Act, 1952.

To appreciate the need for credible evidence in supporting the opinion of the government chemist, I need only refer to three pertinent cases.

In *Munusamy v. Public Prosecutor (supra),* the government chemist therein whilst examining and analysing the exhibits adopted four tests before coming to the conclusion that the subject matter was cannabis. The tests were:

> I conducted physical examination on the materials within the paper rolls. I satisfied myself that all the contents of all the rolls were identical and of similar material. I performed colour test, microscopic examination, and thin-layer chromatography to identify the nature of the material. I found all of them to be cannabis...

On appeal to the Supreme Court, it was held that the trial judge rightly accepted the evidence of the government chemist based on the tests adopted by him.

In *Ng Yik Kwok and others v. Public Prosecutor* [1989] 3 MLJ 166, the government chemist performed qualitative analysis and quantitative estimation on the heroin and the Supreme Court held that the trial Judge was right in accepting the evidence of the government chemist.

Even in *Loo Keck Leong v. Public Prosecutor (supra)* the government chemist carried out three tests to determine if the substance was cannabis notwithstanding the fact that the Supreme Court ultimately ruled that the prosecution had failed to prove that the subject matter was of the genus cannabis as defined by the Act.

Being an expert, the government chemist is obliged to give detailed evidence of his reasons for holding that exhs. P15 and P19 are dangerous drugs of the genus cannabis. Unfortunately this was not done. On the subject of the duty of an expert, I need only quote the case of *Sim Ah Song & Anor. v. Rex* [1951] MLJ 150 where Brown Ag. CJ said at p. 151:

> The business of an expert witness is to draw upon the store of his knowledge and experience in order to explain some matter which his experience should qualify him to understand. He is quite entitled to express his opinion, which indeed is the natural corollary of his explanantion. But a bare expression of his opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which is its duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court.

The patent errors by the prosecution to lead evidence through the government chemist as to the tests adopted by him in the course of analysing exhs. P15 and P19, and consequently the failure to establish whether the resin has not been extracted cannot be relaxed by shifting the blame to the defence for not cross examining the government chemist on these points. Surely, the defence is entitled to take advantage of any laxity by the prosecution. Moreover, the cardinal principle of criminal law is that the prosecution must prove its case from "A" to "Z" beyond reasonable doubt (see *Sun Kam Heng v. Public Prosecutor* [1993] 1 CLJ 109). On the duty of the presiding judge at the close of the prosecution's case, Mohamed Azmi SCJ in *Munusamy v. Public Prosecutor (supra)* succinctly said: "In considering the question of law whether there is some evidence (not inherently incredible) to prove one or more of the essential ingredients of the alleged offence, a judge or magistrate must by necessity evaluate and weigh all the evidence. If there is no evidence at all to prove one or more of the essential ingredients of the offence, the accused must be acquitted without calling for his defence." It is also imposing on the part of the prosecution if it were to ask the court to relax the requirements of strict proof to bridge any material gap in the evidence of the government chemist. No defence counsel in his right mind would cross examine a prosecution witness so as to strengthen the prosecution's case. The defence counsel would naturally leave any material gap in the prosecution's case without so much as to cross examine the witness on it, lest that witness would close that material gap. In the present case, the learned defence counsel, rightly took the course which he took, in not cross-examining the government chemist on the material gaps as explained earlier. It was only after the prosecution had closed its case, that the defence utilised the

material gaps and made an onslaught on the prosecution by submitting, *inter alia*, that the material gaps in the government chemist's testimony struck at the very core of the charge and hence fatal.

Next, Zaidi testified that Badaruddin told him that both the accused were believed to be Thai nationals. Zaidi further testified that he had bodily examined both the accused but failed to recover any personal identification documents on them. Again, Zaidi testified that the families of both the accused visited them while they were detained at Gerik police station. Zaidi spoke to the family members and even to a male person believed to be the State Assemblyman for both the accused. Zaidi requested them to supply the personal identification documents of both the accused. As a result of such a request, Zaidi was handed the identification document of the second accused. This identification document is written in Thai language and was marked as exhs. P29A and P29B. But Zaidi was not provided with the identification document of the first accused. This prompted Zaidi to write a letter to Puan Rodoh b. Poh Koh on 13 October 1992, a relative of the first accused, and requested for the personal identification of the first accused. See the letter marked as exh. P30. Unfortunately, no evidence was led through Zaidi whether there was a reply to P30. The matter was left as it were, dangling in the air.

It was in evidence, that Zaidi identified the first accused as Abdul Karim @ Dollah bin Pak Kub and the second accused as Awang Besar @ Ahmad bin Harun. How did Zaidi know their names? No evidence was led on this score. I am mindful of the fact that both the accused were arrested at the scene by Busra and Aziz. Even Detective Constable 92034 Roslan bin Deraman (PW11) who handcuffed the first accused at the scene and Detective Constable 83752 Abu Hussein bin Siri (PW10) who handcuffed the second accused at the scene together with Badaruddin, categorically identified both the accused as the targets in this case. Yet, there was not an iota of evidence as to the names of both the accused persons. The identification documents of the second accused (P29A and B) cannot shed any light as no translations were done on the said documents. The documents should have been correctly translated by a qualified interpreter. The importance of translating a document was considered in *Woo Chin Chong & Ors. v. Public Prosecutors* [1953] 22 MLJ 130 where Storr J said: "Where persons are prosecuted in mass for an offence and the prosecution intended to rely on presumptions against these persons, it is absolutely essential that the investigations are properly carried out and all documents that it is intended to tender as exhibits are correctly translated by a qualified interpreter." The prosecution failed to establish the names of both the accused persons even though they had the means of doing so.

The learned deputy public prosecutor is in touch with the police and other investigating agencies and can easily procure this piece of evidence without much fuss. Yet, nothing was done towards this end. Consequently, the court is left in the dark as to the names of both the accused persons. With scanty information, somehow, the learned deputy public prosecutor (not the same deputy public prosecutor that conducted the prosecution), prepared a requisition under s. 41A of the Act, and the consent under s. 39B(3) of the Act, itemising the names of both the accused therein and accordingly transferred the case to the High Court (see exh. P3). Exhibit P3 was dated 27 October 1992. It was held in *Abdul Hamid v. Public Prosecutor* [1956] MLJ 231 that a consent to prosecute "is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side." With respect, it is the learned deputy prosecutor that signed exh. P3 the same degree of deliberation as set out in *Abdul Hamid v. Public Prosecutor (supra).* Devoid of the names of both persons, as stated in the recital of the facts set out earlier, the learned deputy public prosecutor clearly has not acted within the scope of *Abdul Hamid v. Public Prosecutor (supra)* when he issued exh. P3. It follows, therefore, that the consent was defective. That being so, the trial is a nullity on the authority of *Lyn Hong Yap v. Public Prosecutor* [1956] MLJ 226.

Next, at the scene, Aziz stated that on both occasions, the two packages were handed by the second accused direct to Busra. But Busra stated that the second package was handed by the second accused to the first accused who then handed it to him. This contradiction is very material since both Busra and Aziz were agents provocateur. By virtue of s. 40A of the Act, the evidence of an agent provocateur needs no corroboration to found a finding by the trial court. The gravity of this contradiction is accentuated by the search list (exh. P27) which states that the two packages were held by both the accused persons. The significance of the contents of the search list cannot be overlooked by this court. It means that there are two versions to the prosecution's story in regard to the handling of two packges containing the purported cannabis in question, at the scene. This weakens greatly the prosecution's case. This brings me to the next point in regard to the failure of Zaidi to lift fingerprints from the exhibits and to take fingernail clippings or hand swabs from the two accused persons. Such failure, bearing in mind, the two versions of the prosecution's case highlighted above, would in the circumstances, weaken further the prosecution's case.

Now, reverting back to the evidence of Zaidi, one point stands out prominently. On 25 May 1992 at about 5.30pm, in the CAD room of Gerik police station, Zaidi received the two packages duly marked by Badaruddin.

Zaidi forthwith put the two packages inside his cabinet file under lock and key. That cabinet file was located in Zaidi's room. Zaidi was the only one who had access to the key of the cabinet file. That cabinet file was solely owned by Zaidi. On 25 May 1992 at about 8.50pm, Zaidi took out the two packages from his cabinet file for the purpose of marking the exhibits. This was done rather meticulously by him. Then, on 25 May 1992 at about 9.40pm, after having marked the exhibits, he directed Lance Corporal 66062 Mazle bin Md. Nasir (PW4) to take photographs of the exhibits as per P23A to D. After having done this, Zaidi then put the exhibits in the original packages and placed them inside his cabinet file, again under lock and key. And on 27 May 1992 at 8.30am, Zaidi again took out the two packages from his cabinet file for the purpose of packing and sealing the exhibits for onward transmission to the government chemist, which was done on the same day at 3.20pm. On 15 September 1992 at 2.30pm, Zaidi collected the two packages (P5 and P6) duly sealed with the chemistry seals and on his return, placed them in his cabinet file, under lock and key. On 16 September 1992 at 8.20am, Zaidi once again took out the two packages bearing chemistry seals and handed same to Lance Corporal 65634 Ahman bin Sa'ad (PW1), the exhibit store keeper of Gerik police station, for safe custody. Zaidi signed a document (P7) verifying the handing over of the exhibits to Ahman. From the recital of the facts, there were several movements of the exhibits from the cabinet file. This was not a government issued cabinet and Zaidi himself admitted that it was his personal cabinet file. Being a non-government issued cabinet, it was not controlled by means of a register book where its contents and the movements of its contents would be recorded in the register book, for instance like the buku pendaftaran barang-barang kes (P4) and the buku pergerakan barang kes (P8). Thus, it was incumbent on the part of Zaidi to testify that in the cabinet file, at the material times as specified earlier, there were no other exhibits kept there. This was not done. Thus, the possibility of a mixed-up cannot be ruled out.

The failure of the prosecution to tender the proton saga car or at least the photograph of the said car, which to all intents and purposes have played a major part in the case, confounded the matter further. Zaidi agreed under cross examination, that as an investigating officer, he must cover all grounds. Surely, he must have known that Busra put the two packages inside the boot of the said motorcar. The least Zaidi could have done was to take a photograph of the boot of the said car bearing the two packages in question. Had this been done, it would certainly put an end to any form of criticism against his inefficiency.

Next, there was no evidence that the mechanism of the boot of the proton saga car was in perfect order. There was evidence that at Pengkalan Hulu town when both Aziz and Busra met both the accused and had discussions at the restaurant of Hotel Highland, Busra had locked the proton saga car. Even before Aziz and Busra proceeded to Pengkalan Hulu town, they testified that they had checked the boot of the proton saga and did not find anything inside the boot except the spare tyre. The importance of the boot of the proton saga cannot be denied for the two packages containing the drugs were placed therein. No evidence was led as to whether the mechanism of the boot of the proton saga was in perfect order ie, not defective. Thus, when Busra locked the said car at Pengkalan Hulu town and left the said car unattended, the possibility that the boot of the said car was tampered with cannot be ruled out. This becomes accentuated when one considers that at the scene, Busra did not testify that the boot was empty before he placed both packages therein. Devoid of this vital piece of evidence, the possibility that there were exhibits other than the two packages inside the boot cannot be ruled out entirely.

Finally, no evidence was led as to what had transpired in regard to the RM8,000 which Busra showed to the first accused while they were in the said motorcar.

All these factors, taken individually or cumulatively, would greatly affect the strength of the prosecution's case.

Accordingly, I had no alternative but to order an acquittal and discharge of both the accused without calling for their defence.